

### REMARKS / ARGUMENTS

Reconsideration of the application is respectfully requested in view of the following arguments. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

#### REJECTIONS UNDER 35 U.S.C. § 102(B) - DEROSA

The Office Action rejected claims **28-51** under 35 U.S.C. § 102(b) as anticipated by *DeRosa, Jr. et al* (US Patent No. 5,822,565).

#### Regarding claim 28:

The Applicant respectfully submits that claim 28 as amended is not anticipated by DeRosa because claim 28 as amended has at least one limitation not disclosed by DeRosa, specifically:

determining if a computer, using firmware but no additional software, cannot read a block of data on a medium coupled with the computer during a pre-boot phase;

DeRosa discloses a computer with an underlying system software (Col. 4 ln. 36-38). DeRosa identifies the "underlying system software" as firmware. Col. 5, ln. 16-19. DeRosa describes that the underlying system software "has control of the computer system prior to booting similar to the control an operating system may have subsequent to booting the computer system." Col. 5, ln. 24-27.

DeRosa discloses that during start up of a computer, prior to a booting an operation system (i.e. during a pre-boot phase), the underlying system software is first executed, then later a configuration utility is executed. Fig. 3, blocks 32, 38; Col. 5, ln. 50-64. DeRosa discloses the configuration utility identifies configuration files needed for a particular operating system when the underlying system software identifies the operating system to the configuration utility. Col. 5 ln. 40-49. The configuration utility and the configuration files may be stored on the same computer disk. Col. 6 ln. 50-51.

However, DeRosa does not contemplate a situation where the computer, using the firmware but no additional software, is unable to read data on a particular medium. Thus DeRosa never describes “determining if a computer, using firmware but no additional software, cannot read a block of data on a medium.”

Nor does DeRosa disclose any of the other stages of the method claimed by claim 28 that would be preformed after such a determination was made. Particularly, DeRosa does not disclose the limitation:

in a case where the computer, using firmware but no additional software, cannot read the block of data,

reading, using firmware but no additional software, a header on the medium that describes a location of a program on the medium, the program to enable the computer to read the block of data,

The “underlying system software” in DeRosa cannot be considered the equivalent of the “program” in claim 28 as amended. DeRosa identifies the “underlying system software” as firmware. Col. 5, ln. 16-19. Claim 28 as amended distinguishes the “program” from the “firmware” by claiming for the “program” at least one function that the “firmware” lacks – the ability to enable the computer to read the block of data on the medium. Thus in claim 28 as amended the “program” cannot be equated the “firmware,” and thus the “underlying system software” in DeRosa cannot be equated to the “program” in claim 28 as amended.

The “configuration utility” in DeRosa cannot be considered the equivalent of the “program” in claim 28 as amended. DeRosa discloses that the configuration utility may directly communicate with non-volatile memory or may do so with the assistance of the underlying system software. Col. 6 ln. 31-36. However, DeRosa never suggests that that the underlying system software (firmware) is unable without additional software to read certain data on this same non-volatile memory. The distinguishing feature of the “program” in claim 28 is that it enables the computer to read what the firmware cannot. Thus the “configuration utility” in DeRosa is not the equivalent of the “program” in claim 28 as amended.

The “configuration utility” in DeRosa cannot be considered the equivalent of the “firmware” in claim 28 as amended. DeRosa distinguishes “configuration utility” from “underlying system software” by setting out the functions of each and their interactions. See e.g. Col. 5 45-65. DeRosa identifies the “underlying system software” as firmware. Col. 5, ln. 16-19. Thus the “configuration utility” in DeRosa is not the equivalent of the “firmware” in claim 28 as amended.

For at least the reasons given here, the Applicant respectfully submits that the rejection of claim 28 has been overcome by amendment.

Regarding claim 29-35:

Claims 29-35 depend on claim 28. The Applicant respectfully submits that the rejection of claims 29-35 are overcome for at least the same reasons as given for claim 28.

Regarding claim 36-43:

Claim 36 as amended is a claim for an article of manufacture that performs functions as described by claim 28 as amended. The Applicant respectfully submits that the rejection of claim 36 as amended is overcome for at least the same reasons as given above regarding claim 28.

Claims 37-43 depend on claim 36. The Applicant respectfully submits that the rejection of claims 37-43 are overcome for at least the same reasons as given for claim 36.

Regarding claim 44-51:

Claim 44 as amended is a claim for a system that performs functions as described by claim 28 as amended. The Applicant respectfully submits that the rejection of claim 44 as amended is overcome for at least the same reasons as given above regarding claim 28.

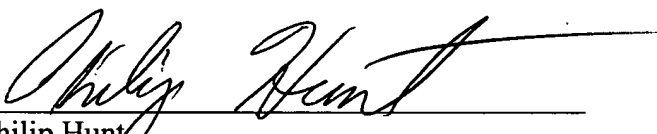
Claims 45-51 depend on claim 44. The Applicant respectfully submits that the rejection of claims 45-51 are overcome for at least the same reasons as given for claim 44.

### CONCLUSION

Applicant respectfully submits the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Phil Hunt at (503) 439-6073. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,  
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Date: 7/13/2007

  
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